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8 BANKRUPTCY COURT FOR THE  
9 EASTERN DISTRICT OF WASHINGTON AT SPOKANE

10  
11 In re Giga Watt, Inc.,  
12 Debtor.

COMMITTEE'S LIMITED  
RESPONSE TO CHAPTER 11  
TRUSTEE'S MOTION TO SELL  
THE TNT FACILITY

CASE NO: 18-03197 FPC 11

14  
15 **I. INTRODUCTION**

16 With the pending motion to sell the TNT facility, the Chapter 11 Trustee  
17 has come to the effective end of a process to sell all the tangible assets of this  
18 bankruptcy estate. All that remains is a series of potential litigation claims for  
19 which the Trustee may be able to hire contingent fee legal counsel to pursue, and  
20 for which recovery is uncertain, and destined to be several years in the future.<sup>1</sup>  
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25 <sup>1</sup> The Committee is aware of several meaningful litigations that could be brought  
26 by the bankruptcy estate. The Chapter 11 Trustee has expressed openness to  
pursuing all these litigations other than the one against Douglas County PUD.  
For this reason, the Committee is seeking authorization at the upcoming hearing

1           The \$200,000 that the estate will earn from the TNT sale will be welcome,  
2 but when added up with all the other sources of income (funds from operations  
3 while they were ongoing, the settlement of the Carlson claims, and the sale of the  
4 Pangborn equipment), back-of-the napkin accounting suggests that there may be  
5 insufficient income to pay the administrative and professional fees in this case.<sup>2</sup>  
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7

8           In short, none of the 300-plus persons who filed a proof of claim in this  
9 case will be paid out anything unless some nebulous litigation claims, which the  
10 Chapter 11 Trustee may or may not assert, brings in significant cash in the distant  
11 future. The Committee always feared this precarious financial outcome, and that  
12 is why back in December 2019, they took the unorthodox step of putting forward  
13 their own Disclosure Statement, proposing to hand the assets over to the  
14 unsecured creditors. This seemed preferable to the Chapter 11 Trustee's apparent  
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20           to be able to pursue this one cause of action. The Trustee can take the reigns on  
21 the other cases that he apparently has greater confidence in.

22           Moreover, if the Trustee's primary objection to Douglas County PUD litigation is  
23 that the PUD might interfere with a potential sale of the TNT facility, then the  
24 Committee specifically recommends that the Court hear the sale motion first at  
25 the upcoming May 13, 2020 hearing.

26           <sup>2</sup> The undersigned's current fees are less than \$35,000, and a motion to allow  
such fees will be filed in the coming week.

1 plan to (a) spend a lot of time, while professional fees continue to accrue ever  
2 higher, and (b) hope the market would come through with significant sales prices.  
3

4 All parties would have been far better served six months ago if the then-  
5 existing operations had been turned over to the unsecured creditors, as proposed  
6 in the Disclosure Statement. ECF No. 431. At least then, something would have  
7 ended up in unsecured creditors' pockets, and half a year's worth of  
8 administrative fees would have been avoided, which are presumably in excess of  
9 the \$200,000 that will now be coming into the estate as a result of this sale.  
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## 12 II. LEGAL ARGUMENT

13 What is done, cannot clearly be undone, and so at this point, the Committee  
14 supports at least this money coming into the estate. The motion to sell can be  
15 approved.  
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17 That said, the Committee strongly objects to previously unknown or  
18 undisclosed data stored locally on Giga Watt storage devices being transferred to  
19 the buyer as part of the transaction, for success with future litigations may hinge  
20 on these records, which may be the last gasp for a return to unsecured creditors.  
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23 Moreover, as a matter of equity, the Committee believes Chapter 11  
24 Trustee should only sell property (mining equipment) that it has not been  
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26

1 established belongs to the bankruptcy estate.<sup>3</sup> Once the Miners' Application has  
2 been decided, then whether such mining equipment could be sold by the Chapter  
3  
4 11 Trustee would best seem to be ripe.

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6 DATED this 8<sup>th</sup> day of May, 2020.

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9 By /s/ Ben Ellison

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26 <sup>3</sup> Chairman of the Committee Jun Dam recused himself from voting on the  
response to the present motion.